

AMENDED IN SENATE APRIL 21, 2003

SENATE BILL

No. 422

Introduced by Senator Florez

February 20, 2003

An act to amend Section 290.4 of the Penal Code, relating to sex offenders.

LEGISLATIVE COUNSEL'S DIGEST

SB 422, as amended, Florez. Sex offenders.

Existing law, operative until January 1, 2004, requires the Department of Justice to continually compile specified information, categorized by community of residence and ZIP Code, regarding any person required to register as a sex offender for a conviction for the commission or attempted commission of any specified sex offense. Existing law requires the Department of Justice to provide a CD-ROM or other electronic medium containing the compiled sex offender information to certain law enforcement agencies. These law enforcement agencies are required to make the CD-ROM or other electronic medium available for public viewing, as specified. Existing law also requires the department to operate a "900" telephone number that members of the public may call to inquire whether a named individual is required to register as *a sex-offenders offender*. Existing law provides that income from the operation of the "900" *telephone* number be deposited into the Sexual Predator Public Information Account for the purpose of implementing these provisions. Existing law provides that any person who uses information disclosed pursuant to these provisions to commit a misdemeanor or a felony shall be subject to an additional fine of between \$500 and \$1,000, or an additional 5-year term of imprisonment, respectively.

This bill would require the department to operate a “1-800” telephone number instead of a “900” *telephone* number that would be accessible by, and free to, the public, to inquire whether a named individual is registered as a sex offender. *The bill would delete the requirement that the department provide a CD-ROM containing the compiled sex offender information.* This bill would also require the department to operate a World Wide Web site containing information about registered sex offenders, as specified, excluding the name or address of his or her employer, or their street address and criminal history other than the specific crimes for which he or she was required to register. This bill would provide a person desiring to access the Web site would be required to affirm that he or she is not himself or herself a registered sex offender and that he or she understand that the purpose of the release of information is to allow members of the public to protect themselves and their children from sex offenders. This bill would provide that any person who uses information disclosed pursuant to these provisions to commit a crime is also punishable as stated above. This bill would also provide that these provisions would remain in effect until January 1, ~~2005~~ 2006.

Because this bill would change the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 290.4 of the Penal Code is amended to
2 read:
3 290.4. (a) (1) The Department of Justice shall continually
4 compile information as described in paragraph (2) regarding any
5 person required to register under Section 290 for a conviction of
6 Section 207 or 209 committed with the intent to violate Section
7 261, 286, 288, 288a, or 289; Section 220, except assault to commit
8 mayhem; Section 243.4, provided that the offense is a felony;



1 paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261;
2 Section 264.1; Section 266, provided that the offense is a felony;
3 Section 266c, provided that the offense is a felony; Section 266j;
4 Section 267; Section 269; paragraph (1) of subdivision (b) of
5 Section 286, provided that the offense is a felony; paragraph (2)
6 of subdivision (b), subdivision (c), (d), (f), (g), (i), (j), or (k) of
7 Section 286; Section 288; paragraph (1) of subdivision (b) of
8 Section 288a, provided that the offense is a felony; paragraph (2)
9 of subdivision (b), (c), (d), (f), (g), (i), (j), or (k) of Section 288a;
10 Section 288.5; subdivision (a), (b), (d), (e), (f), (g), or (h) of
11 Section 289, provided that the offense is a felony; subdivision (i)
12 or (j) of Section 289; Section 647.6; or the attempted commission
13 of any of these offenses; or the statutory predecessor of any of
14 these offenses or any offense which, if committed or attempted in
15 this state, would have been punishable as one or more of the
16 offenses described in this section. This requirement shall not be
17 applied to a person whose duty to register has been terminated
18 pursuant to paragraph (5) of subdivision (d) of Section 290, or to
19 a person who has been relieved of his or her duty to register under
20 Section 290.5.

21 (2) The information shall be categorized by community of
22 residence and ZIP Code. The information shall include the names
23 and known aliases of the person, photograph, a physical
24 description, gender, race, date of birth, the criminal history, and the
25 ~~address~~ *block and street name*, including ZIP Code, in which the
26 person resides, *whether the person is compliant with the current*
27 *registration cycle*, and any other information that the Department
28 of Justice deems relevant, not including information that would
29 identify the victim.

30 (3) (A) The department shall operate a “1-800” telephone
31 number that members of the public may call and inquire whether
32 a named individual is listed among those described in this
33 subdivision. The department shall ascertain whether a named
34 person reasonably appears to be a person so listed and provide the
35 caller with the information described in paragraph (2), except the
36 department shall not disclose the name or address of a listed
37 person’s employer, or the street address or criminal history of a
38 person listed, except to disclose the ZIP Code area in which the
39 person resides and to describe the specific crimes for which the
40 registrant was required to register. The department shall decide



1 whether the named person reasonably appears to be a person listed,
2 based upon information from the caller providing information that
3 shall include (A) an exact street address, including apartment
4 number, social security number, California driver's license or
5 identification number, or birth date along with additional
6 information that may include any of the following: name, hair
7 color, eye color, height, weight, distinctive markings, ethnicity; or
8 (B) any combination of at least six of the above-listed
9 characteristics if an exact birth date or address is not available. If
10 three of the characteristics provided include ethnicity, hair color,
11 and eye color, a seventh identifying characteristic shall be
12 provided. Any information identifying the victim by name, birth
13 date, address, or relation to the registrant shall be excluded by the
14 department.

15 (B) When the "1-800" telephone number is called, a preamble
16 shall be played. The preamble shall run at least the length of time
17 required by federal law and shall provide the following
18 information:

19 (i) Notice that the caller is required to be 18 years of age or
20 older.

21 (ii) A warning that it is illegal to use information obtained
22 through the "1-800" telephone number to commit a crime against
23 any registrant or to engage in illegal discrimination or harassment
24 against any registrant.

25 (iii) Notice that the caller is required to have the birth date,
26 California driver's license or identification number, social security
27 number, address, or other identifying information regarding the
28 person about whom information is sought in order to achieve a
29 positive identification of that person.

30 (iv) A statement that the number is not a crime hotline and that
31 any suspected criminal activity should be reported to local
32 authorities.

33 (v) A statement that the caller should have a reasonable
34 suspicion that a person is at risk.

35 (4) (A) On or before July 1, 1997, the department shall provide
36 ~~a CD-ROM or other~~ *an* electronic medium containing the
37 information described in paragraph (2), except the name or address
38 of a listed person's employer, or the listed person's street address
39 and criminal history other than the specific crimes for which the
40 person was required to register, for all persons described in

1 paragraph (1) of subdivision (a), and shall update and distribute the
2 ~~CD-ROM or other~~ electronic medium on a monthly basis to the
3 sheriff's department in each county, municipal police departments
4 of cities with a population of more than 200,000, and each law
5 enforcement agency listed in subparagraph (I) of paragraph (1) of
6 subdivision (n) of Section 290. These law enforcement agencies
7 may obtain additional copies by purchasing a yearly subscription
8 to the ~~CD-ROM or other~~ electronic medium from the Department
9 of Justice for a yearly subscription fee. The Department of Justice,
10 the ~~sheriff's~~ *sheriffs'* departments, and the municipal police
11 departments of cities with a population of more than 200,000 shall
12 make, and the other law enforcement agencies may make, the
13 ~~CD-ROM or other~~ electronic medium available for viewing by the
14 public in accordance with the following: The agency may require
15 that a person applying to view the ~~CD-ROM or other~~ electronic
16 medium express an articulable purpose in order to have access
17 thereto. The applicant shall provide identification in the form of
18 a California driver's license, California identification card, or
19 military identification card and orders with proof of permanent
20 assignment or attachment to a military command or vessel in
21 California, showing the applicant to be at least 18 years of age. The
22 applicant shall sign a statement, on a form provided by the
23 Department of Justice, stating that the applicant is not a registered
24 sex offender, that he or she understands the purpose of the release
25 of information is to allow members of the public to protect
26 themselves and their children from sex offenders, and he or she
27 understands it is unlawful to use information obtained from the
28 ~~CD-ROM or other~~ electronic medium to commit a crime against
29 any registrant or to engage in illegal discrimination or harassment
30 of any registrant. The signed statement shall be maintained in a file
31 in the designated law enforcement agency's office. A person under
32 18 years of age may accompany an applicant who is that person's
33 parent or legal guardian for the purpose of viewing the ~~CD-ROM~~
34 ~~or other~~ electronic medium.

35 (B) The records of persons requesting to view the ~~CD-ROM or~~
36 ~~other~~ electronic medium are confidential, except that a copy of the
37 applications requesting to view the ~~CD-ROM or other~~ electronic
38 medium may be disclosed to law enforcement agencies for law
39 enforcement purposes.

1 (C) Any information identifying the victim by name, birth date,
2 address, or relationship to the registrant shall be excluded from the
3 ~~CD-ROM or other~~ electronic medium.

4 (5) (A) The department shall make the information described
5 in paragraph (2), except the name or address of a listed person's
6 employer, or the listed person's street address and criminal history
7 other than the specific crimes for which the person was required
8 to register, for all persons described in paragraph (1) of subdivision
9 (a), available via the World Wide Web and shall update the
10 information on a monthly basis. A visitor to the Web site shall
11 affirm that he or she is not a registered sex offender, that he or she
12 understands the purpose of the release of information is to allow
13 members of the public to protect themselves and their children
14 from sex offenders, and he or she understands it is unlawful to use
15 information obtained from the Web site to commit a crime against
16 any registrant or to engage in illegal discrimination or harassment
17 of any registrant.

18 (B) Any database containing information about visitors to the
19 Web site is confidential, except that it may be made available to
20 law enforcement agencies for law enforcement purposes.

21 (C) Any information identifying the victim by name, birth date,
22 address, or relationship to the registrant shall be excluded from the
23 Web site.

24 (b) (1) Any person who uses information disclosed pursuant to
25 this section to commit a felony shall be punished, in addition and
26 consecutive to, any other punishment, by a five-year term of
27 imprisonment in the state prison.

28 (2) Any person who, without authorization, uses information
29 disclosed pursuant to this section to commit a misdemeanor shall
30 be subject to, in addition to any other penalty or fine imposed, a
31 fine of not less than five hundred dollars (\$500) and not more than
32 one thousand dollars (\$1,000).

33 (c) The record of the compilation of offender information on
34 each ~~CD-ROM or other~~ electronic medium distributed pursuant to
35 this section shall be used only for law enforcement purposes and
36 the public safety purposes specified in this section and Section
37 290. This record shall not be distributed or removed from the
38 custody of the law enforcement agency that is authorized to retain
39 it. Information obtained from this record shall be disclosed to a

1 member of the public only as provided in this section or Section
2 290, or any other statute expressly authorizing it.

3 Any person who copies, distributes, discloses, or receives this
4 record or information from it, except as authorized by law, is guilty
5 of a misdemeanor, punishable by imprisonment in a county jail not
6 to exceed six months, or by a fine not exceeding one thousand
7 dollars (\$1,000), or by both that imprisonment and fine. This
8 subdivision shall not apply to a law enforcement officer who
9 makes a copy as part of his or her official duties in the course of
10 a criminal investigation, court case, or as otherwise authorized by
11 subdivision (n) of Section 290. This subdivision shall not prohibit
12 copying information by handwriting.

13 Notwithstanding Section 6254.5 of the Government Code,
14 disclosure of information pursuant to this section is not a waiver
15 of exemptions under Chapter 3.5 (commencing with Section
16 6250) of Title 1 of Division 7 of the Government Code and does
17 not affect other statutory restrictions on disclosure in other
18 situations.

19 (d) Unauthorized removal or destruction of the ~~CD-ROM or~~
20 ~~other~~ electronic medium from the offices of any law enforcement
21 agency is a misdemeanor, punishable by imprisonment in a county
22 jail not to exceed one year, or by a fine not exceeding one thousand
23 dollars (\$1,000), or by both that imprisonment and fine.

24 (e) (1) A person is authorized to use information disclosed
25 pursuant to this section only to protect a person at risk.

26 This section shall not affect authorized access to, or use of,
27 information pursuant to, among other provisions, Sections 11105
28 and 11105.3 of this code, Section 226.55 of the Civil Code,
29 Sections 777.5 and 14409.2 of the Financial Code, Sections
30 1522.01 and 1596.871 of the Health and Safety Code, and Section
31 432.7 of the Labor Code.

32 (2) Except as authorized under paragraph (1) or any other
33 provision of law, use of any information that is disclosed pursuant
34 to this section for purposes of relating to any of the following is
35 prohibited:

- 36 (A) Health insurance.
- 37 (B) Insurance.
- 38 (C) Loans.
- 39 (D) Credit.
- 40 (E) Employment.

1 (F) Education, scholarships, or fellowships.

2 (G) Housing or accommodations.

3 (H) Benefits, privileges, or services provided by any business
4 establishment.

5 (3) (A) Any use of information disclosed pursuant to this
6 section for purposes other than those provided by paragraph (1) of
7 subdivision (e) or in violation of paragraph (2) of subdivision (e)
8 shall make the user liable for the actual damages, and any amount
9 that may be determined by a jury or a court sitting without a jury,
10 not exceeding three times the amount of actual damage, and not
11 less than two hundred fifty dollars (\$250), and attorney's fees,
12 exemplary damages, or a civil penalty not exceeding twenty-five
13 thousand dollars (\$25,000).

14 (B) Whenever there is reasonable cause to believe that any
15 person or group of persons is engaged in a pattern or practice of
16 misuse of the "1-800" telephone number in violation of paragraph
17 (2) of subdivision (e), the Attorney General, any district attorney,
18 or city attorney, or any person aggrieved by the misuse of that
19 number is authorized to bring a civil action in the appropriate court
20 requesting preventive relief, including an application for a
21 permanent or temporary injunction, restraining order, or other
22 order against the person or group of persons responsible for the
23 pattern or practice of misuse. The foregoing remedies shall be
24 independent of any other remedies or procedures that may be
25 available to an aggrieved party under other provisions of law,
26 including Part 2 (commencing with Section 43) of Division 1 of
27 the Civil Code.

28 (f) This section shall not be deemed to authorize the
29 publication, distribution, or disclosure of the address of any person
30 about whom information can be published, distributed, or
31 disclosed pursuant to this section.

32 (g) Community notification shall be governed by subdivisions
33 (m) and (n) of Section 290.

34 ~~(h) The Department of Justice shall submit to the Legislature~~
35 ~~an annual report on the operation of the "900" telephone number~~
36 ~~required by paragraph (3) of subdivision (a) on July 1, 1996, July~~
37 ~~1, 1997, and July 1, 1998. The annual report shall include all of the~~
38 ~~following:~~

39 ~~(1) Number of calls received.~~

~~(2) Number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed pursuant to subdivision (a).~~

~~(3) Number of persons listed pursuant to subdivision (a).~~

~~(4) A summary of the success of the “1-800” telephone number program based upon selected factors.~~

~~(i)~~

~~(h) Any law enforcement agency and employees of any law enforcement agency shall be immune from liability for good faith conduct under this section. For the purposes of this section, “law enforcement agency” means the Attorney General of California, every district attorney, the Department of Corrections, the Department of the Youth Authority, and every state or local agency expressly authorized by statute to investigate or prosecute law violators.~~

~~(j) On or before July 1, 2000, the Department of Justice shall make a report to the Legislature concerning the changes to the operation of the “900” telephone number program made by the amendments to this section by Chapter 908 of the Statutes of 1996. The report shall include all of the following:~~

~~(1) Number of calls received by county.~~

~~(2) Number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed pursuant to subdivision (a).~~

~~(3) Number of persons listed pursuant to subdivision (a).~~

~~(4) Statistical information concerning prosecutions of persons for misuse of the “900” telephone number program, including the outcomes of those prosecutions.~~

~~(5) A summary of the success of the “900” telephone number based upon selected factors.~~

~~(k)~~

~~(i) The registration and public notification provisions of this section are applicable to every person described in these sections, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in these sections, regardless of when it was committed.~~

~~(l) No later than December 31, 1998, the Department of Justice shall prepare an informational pamphlet that shall be mailed to any member of the public who makes an inquiry using the "1-800" telephone number required by this section and who provides an address. The pamphlet shall provide basic information concerning appropriate steps parents, guardians, and other responsible adults can take to ensure a child is safe from a suspected child molester, including, but not limited to, how to identify suspicious activity by an adult, common facts and myths about child molesters, and how to obtain additional help and information. A notice shall be provided to callers to the "1-800" telephone number that they will receive the pamphlet, if an address is provided.~~

~~(m)~~

(j) On or before July 1, 2001, and every year thereafter, the Department of Justice shall make a report to the Legislature concerning the operation of this section.

~~(n)~~

(k) This section shall remain operative only until January 1, 2005 2006, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before that date, deletes or extends that date.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.